IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 899 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - No

2. To be referred to the Reporter or not? - No

3. Whether Their Lordships wish to see the fair copy of the judgement? - No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?- No

5. Whether it is to be circulated to the Civil Judge?- No

ARIF ABDUL SATTAR TOL

Versus

STATE OF GUJARAT

Appearance:

MR JM PANCHAL for Petitioner

Mr.S.T. Mehta, Additional PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 11/07/96

ORAL JUDGEMENT : (Per H.R. Shelat, J.)

This Appeal has been directed against the

judgment and order dated 22nd September, 1988, rendered by the then learned Additional Sessions Judge, Panchmahals at Godhra, in Sessions Case No.33 of 1988, whereby the appellant came to be convicted of the offences under Section 333, 323, 426, and 186 of the Indian Penal Code, and sentenced to rigorous imprisonment for three years and fine of Rs.500/- in default rigorous imprisonment for three months for the offence under Section 333, rigorous imprisonment for six months and fine of Rs.250/-, in default rigorous imprisonment for one month more for the offence under Section 323 Indian Penal Code, rigorous imprisonment for one month and fine of Rs.100/-, in default rigorous imprisonment for 15 days more for the offence under Section 426 of the Indian Penal Code; but no separate sentence for the offence under Section 186, IPC.

2. The matrix of the prosecution case is that Jar Mohmadkhan Jarifkhan Pathan, at the relevant time, was serving as the Secretary, Market Yard Committee, at Jhalod. His duty was to move around the market area and see that neither sales nor purchases were being made against the Rules applicable. On 8th June, 1987, in the morning at 9.00, he had gone to the weekly bazaar (fair), which is held every Monday, about 200 ft. away from his office area. The appellant was found negotiating with one aboriginal (tribal) with regard to the goats. Jar Mohmadkhan inquired about that dealing. The appellant was then excited. He started to abuse, and assaulted. During the attack, he caused hurt to Jar Mohmadkhan by pelting stone. Being injured near the jaw, his one of the teeth was broken and fell off. The appellant also knocked him down and then climbing over his chest, gave kick blows and fist blows and caused blunt injuries. Thus, the appellant caused injuries to Jar Mohmadkhan, who was a "Public Servant", within the meaning of Section 21 of the Indian Penal Code, with a view to deter him from discharging his official duties. A complaint was then lodged before the Jhalod Police Station. At the conclusion of the Police investigation, the appellant came to be chargesheeted for the above stated offences before the Court of the Judicial Magistrate, First Class at Jhalod. As the learned Magistrate was not competent in law to hear and decide the case, he committed the same to the Court of Sessions at Godhra, which came to be registered as Sessions Case No.33 of 1988. The then learned Sessions Judge at Godhra assigned the case to the then learned Additional Sessions Judge for hearing and disposal in accordance with law. The then learned Additional Sessions Judge, after hearing the parties, framed the charge at Exhibit 2. The appellant pleaded

not guilty and claimed to be tried. The Prosecution then led necessary evidence. Appreciating the evidence on record, the learned Judge below found that the Prosecution had succeeded in establishing the charge of the above-stated offences. He, therefore, convicted and sentenced the appellant, as aforesaid, but acquitted the appellant of the offences under Section 504, Indian Penal Code. It is against that judgment and order of conviction and sentence, the present appeal is filed before this Court.

3. The appellant has assailed the judgment and order on different grounds. According to him, the learned Judge below has not correctly appreciated the evidence, and reached erroneous conclusions. He overlooked material points going to the root of the case. The learned Judge below ought to have borne in mind the defence raised before him. According to the appellant, he was outside the limits of Market Yard. He was purchasing a goat. At that time, the Secretary of the Market Yard questioned him and challenged his dealings. He was, therefore, frightened and raised his hand inadvertently. The Secretary then caught him, and with a view to have escape, he was just struggling and during that struggle, his fingers came to be trapped in the mouth of the Secretary. The Secretary then caused injury by biting and knocked him down, and thereafter, he was beaten on left shoulder and abdomen, about which he also lodged the complaint. As he lodged the complaint, by way of a counterblast, a case against him was engineered and he came to be involved wrongly by filing a complaint.

4. Refuting the submissions made on behalf of the appellant, the learned APP took me through the entire evidence on record and submitted that the defence was afterthought. The learned Judge had not committed any error. There was, therefore, no justifiable reason to interfere with the judgment and order of conviction and sentence.

5. On three main points, the appellant emphasised much, and so the three main points going to the root of the case are required to be dealt with hereinunder. Before I do so, it may be stated that all other points raised by the appellant for the purpose of assailing the judgment and order were virtually withdrawn at the time of hearing, when, in details, the evidence was perused. I will not, therefore, dwell upon all other points raised.

6. In this case, the Doctor has been examined at

Exhibit 16. He has, no doubt, supported the case of the Prosecution about the injury, which he noted on the person of the Secretary, but he has also supported the case about the injuries found on the fingers of the appellant. He has also certified that those injuries were possible by a bite. According to the appellant, after the bite, his fingers were bleeding and his blood also dropped on the clothes of the Secretary. When the appellant was also injured, in law, it is the duty of the Prosecution to explain the injuries on the person of the accused provided the injuries are visible. On the fingers, certainly, the injuries were visible, especially when the fingers were bleeding. However, in the case on hand, the Prosecution has remained silent and has not preferred to explain about the injuries on the person of the appellant. When the injury is not explained, it can safely be said that the Prosecution is suppressing the genesis of the incident and that would raise a reasonable doubt and would certainly discredit the truth of the case of the Prosecution.

7. According to the Prosecution, the appellant pelted stones, and by pelting, caused hurt on the tooth of the Secretary of Market Yard at Jhalod. If by pelting stone the injury is caused and the tooth falls off, certainly, there would be corresponding abrasion, or a cut mark, or a rip or a contusion either on the cheek or on the lips. According to the Doctor, the left lower side tooth had fallen off. Hence, the corresponding injury would certainly be on the left side, close to the jaw portion. The Doctor could note no injury, or mark on that part, and that fact discredits the truth of the Prosecution case. Absence of injury or mark, on the contrary, leads me to hold that injury to the Secretary is caused or he sustained the injury in the manner different than the Prosecution alleges; and that raises a suspicion in the case of the Prosecution.

8. The clothes of the injured Secretary were found bloodstained. The Police, therefore, seized the same, but the Police did not send the same to the Chemical Analyser. Ordinarily, in injury case or murder case, the bloodstained clothes are sent to the Chemical Analyser for ascertaining the blood group and truth. However, in this case, the Police has, for the reasons best known to it, not sent the bloodstained clothes of the injured to the Chemical Analyser. An omission to send should, no doubt, be deprecated. As no just cause is assigned, the omission makes the defence probable. It may be stated that opinion of the Chemical Analyser has certainly the corroborative value. Hence, if direct evidence is

cogent, convincing and free from any infirmity, certainly, corroborative evidence, if found infirm, or absent on record, the same would not be fatal to the Prosecution, but if there is compelling circumstance, necessitating looking for corroboration on perusal of the direct evidence; and if the corroboration is not available, whatever reasonable doubt arises, benefit thereof must go to the accused. On perusal of the direct evidence on record, especially of the injured and Amarsinh, who is said to have rescued, is not free from doubt for the above-stated reasons, and so in this case, before placing any reliance, prudence dictates for corroborative evidence. Still, however, when for the reason best known to the Prosecution, the corroborative evidence, namely, the opinion of the Chemical Analyser is not sought and kept back, that circumstance being strongest on record, discredits the truth of the case of the Prosecution. The learned Judge below has not considered the evidence on record from the above discussed angles and he fell into error while appreciating the evidence and reaching the particular conclusions. On no other ground, the judgment and order of the lower court are assailed.

9. For the aforesaid reasons, I find that the learned Judge below has erroneously convicted and sentenced the appellant, and, therefore, the same are required to be quashed and set aside. Consequently, the appeal is allowed. The conviction and sentence inflicted on the appellant by the lower court in Sessions Case No.33 of 1988 are hereby quashed and set aside, and the appellant is acquitted of the charges levelled against him. Fine, if paid, be refunded.

10. The bail bonds executed by the appellant shall stand cancelled.

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(apj)